

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**DAN O’CONNOR,**

**Plaintiff,**

**vs.**

**CITY OF PINE LAWN, ET. AL.,**

**Defendants.**

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**Case No. 4:11CV668SNLJ**

**MEMORANDUM AND ORDER**

This matter is before the Court on the defendants’ motion for summary judgment [54], filed November 15, 2012; as well as several discovery motions filed by the plaintiff [35, 36, 40, and 44]. It appears that all responsive pleadings have now been filed to the instant motions, and they are ripe for disposition. This cause of action has been recently reset for jury trial on July 22, 2013.

As to the pending summary judgment motion, the Court is compelled to deny it due to the parties’ joint failure with respect to responding to opposing party’s “Statement of Uncontroverted Material Facts.” In conjunction with filing their summary judgment motion, the defendants filed their “Statement of Uncontroverted Material Facts” [57/58]. Plaintiff’s response [72] is non-compliant with Local Rule 4.01(E) in that he simply denies the fact, and references his own “Statement of Material Facts”[69]. Local Rule 4.01(E) requires that “[T]hose matters in dispute shall be set forth with specific references to portions of the record, where available, upon which the opposing party relies.” As noted by the defendants, plaintiff’s response does not cite to specific portions of the evidentiary record but instead requires the Court (and defendants’ counsel) to review plaintiff’s “Statement of Material Facts,” synchronize the “denial” with

plaintiff's particular "fact statement" which in most cases simply references the plaintiff's deposition testimony; or, in some cases, an exhibit which is unrelated to the defendants' original fact statement. This type of opposition simply fails to meet the requirements of Local Rule 4.01(E). Thus, the defendants' fact statements are deemed admitted for purposes of summary judgment.

On the other hand, it appears that the defendants have failed to oppose in any manner the plaintiff's own "Statement of Material Facts" [69]. On January 24, 2013 defendants filed "Reply to Plaintiff's Statement of Facts in Opposition to Defendants' Motion for Summary Judgment" [76]. This document **only** addresses Document [72] - plaintiff's response to the defendants' "Statement of Uncontroverted Material Facts;" it does not address Document [69] - plaintiff's own "Statement of Material Facts." Since there is no opposition compliant with Local Rule 4.01(E); the plaintiff's fact statements are deemed admitted for purposes of summary judgment.

This leaves the Court with no choice other than to find that all material facts regarding Counts I, III, and IV of the plaintiff's amended complaint<sup>1</sup> remain in dispute, and summary judgment cannot be granted as a matter of law.

As of the plaintiff's discovery motions: Motion to Compel [35]; Motion to Quash [36]; First Motion to Compel [40]; and Amended Motion to Compel [44], the Court finds that any matters raised by these motions are now moot in light of the filing of the defendants' summary judgment motion, and trial preparation filings.

Accordingly,

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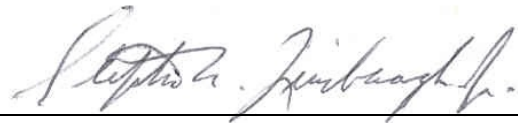
<sup>1</sup>On December 31, 2012 plaintiff filed a motion to dismiss without prejudice Count II of his amended complaint. *See*, Document [68]. The Court granted this motion on January 2, 2013. *See*, Docket Text Order, filed January 2, 2013.

**IT IS HEREBY ORDERED** that defendants' motion for summary judgment [54] be and is **DENIED**.

**IT IS FURTHER ORDERED** that the plaintiff's discovery motions [35], [36], [40], and [44] be and are **DENIED AS MOOT**.

**IT IS FINALLY ORDERED** that this cause of action remains set for jury trial on **JULY 22, 2013**.

Dated this 7th day of May, 2013.

A handwritten signature in cursive script, appearing to read "Stephen A. Fairbairn", is written above a horizontal line.

UNITED STATES DISTRICT JUDGE